



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/162152

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 20, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on January 27, 2015, at West Bend, Wisconsin.

The issue for determination is whether Petitioner has submitted evidence sufficient to demonstrate that a denial of a prior authorization request for personal care worker (PCW) hours should be reversed.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Robert Derendinger, RN  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. A prior authorization (PA) request seeking Medicaid payment for 28.5 hours (or 114 units with each unit = 15 minutes) per week of personal care services and 96 units or 24 hours for as needed personal care hours (PCW) was filed on behalf of Petitioner on or about August 21, 2014. The total cost was

noted to be \$24,674.76. The requesting provider is Milwaukee Center for Independence. The request was for 53 weeks.

3. This request was denied in its entirety. The Department concluded that clinical documentation did not support the need for the personal care assistance with Petitioner's personal care needs.
4. Petitioner is 49 years of age (██████████). She lives in the community with her son. Her diagnosis as noted on the cover of the PA request are neuropathy and diabetes and myalgia myositis [muscle pain and inflammation] unspecified but she is also diagnosed with high blood pressure and morbid obesity and displays the signs and symptoms of gout. The Personal Care Screening Tool also mentions fibromyalgia.

### DISCUSSION

When determining whether to approve any medical service, the OIG must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, § DHS 107.02(3) (e)*:

(e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
  8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and

9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

*Wis. Admin. Code, §DHS 101.03(96m).*

Also, the following Administrative Code provision is relevant here:

**DHS 107.112 Personal care services. (1) COVERED SERVICES.** (a) Personal care services are medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care. The personal care worker shall be assigned by the supervising registered nurse to specific recipients to do specific tasks for those recipients for which the personal care worker has been trained. The personal care worker's training for these specific tasks shall be assured by the supervising registered nurse. The personal care worker is limited to performing only those tasks and services as assigned for each recipient and for which he or she has been specifically trained.

(b) Covered personal care services are:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

*Wis. Admin. Code, §DHS 107.112(1)(a) and (b).*

I note at this point that the Petitioner has the burden of proving that the requested therapy meets the approval criteria and that the standard level of proof applicable is a "preponderance of the evidence". This legal standard of review means, simply, that "it is more likely than not" that Petitioner and/or his/her representatives have demonstrated that the requested services meet the criteria necessary for payment by the Wisconsin Medicaid program. It is the lowest legal standard in use in courts or tribunals.

The Department provided a letter (Ex # 3) that detailed its rationale for denying this request for personal care services. It need not be reproduced here. In brief, the denial was based on the conclusion that the PA request sought assistance for Petitioner with bathing, dressing, grooming, mobility and transfers and toileting but that notes from three medical visits did not indicate problems with gait, range of motion or breathing. These medical visits were on March 28, 2014, June 27, 2014 and July 25, 2014. The Department suggests that Petitioner try some pieces of adaptive equipment – a shower transfer bench, long handled sponge, hand held shower wand, adaptive aids and techniques for dressing and adaptive equipment for toileting.

Petitioner's testimony was that she also has heart and emphysema health issues. She can shower herself but has trouble getting in and out of the shower, that toileting hygiene is difficult and that dressing and pulling up Depends is difficult. She stated that she uses a wig as she has difficulty combing her hair. She

stated that she can walk only a short distance and that her leg and back collapse so she uses a walker indoors and a wheelchair out of her residence. She did have physical therapy (PT) in the past, in particular she remembers going to PT after a 2012 auto accident.

I am upholding the Department's denial of this prior authorization request. While I do not want to minimize Petitioner's concerns about her health issues as they relate to her ability to care for herself, I cannot ignore the notes from the medical visits noted by the Department. They do not indicate the degree of debilitation as to personal cares that the Personal Care Screening Tool suggests.

Petitioner may certainly ask this provider or any other provider to submit a new prior authorization request on her behalf. Petitioner might also ask the provider to assist in requesting the equipment noted by the Department – the shower transfer bench and 'reaching' tools to assist with bathing and dressing – as well as physical therapy.

Also, there are possibly other types of assistance that might be available to Petitioner via the Family Care and/or IRIS programs. Petitioner may want to explore these programs for assistance, again, the Family Care program and the Include, Respect, I Self Direct (IRIS) program. The starting point for learning more about these programs is to contact the Milwaukee County Disability Resource Center:

***How do I Contact the Disability Resource Center?***

Call 414-289-6660

Fax 414-289-8522

Telecommunication Relay Service (TRS): 711

E-mail: [DSD@milwcnty.com](mailto:DSD@milwcnty.com)

Website: [www.county.milwaukee.gov/DSD.htm](http://www.county.milwaukee.gov/DSD.htm)

***NOTE: The provider will not receive a copy of this Decision. Petitioner must provide a copy to the provider if she wants the provider to have it.***

**CONCLUSIONS OF LAW**

That the evidence offered on behalf of Petitioner is not sufficient to reverse the denial of this prior authorization request for personal care worker service hours is to be paid for by the Medicaid program.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

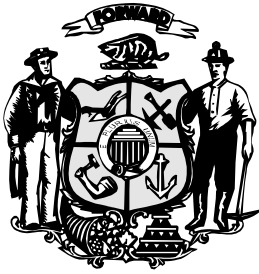
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 16th day of March, 2015

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 16, 2015.

Division of Health Care Access and Accountability